

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

HARBOR ISLAND DYNAMIC LLC,

Plaintiff,

v.

NXP SEMICONDUCTORS N.V., NXP  
B.V., NXP SEMICONDUCTORS  
GUANGDONG LTD., NXP  
SEMICONDUCTORS (BEIJING) LTD.,  
NXP SEMICONDUCTORS (TIANJIN)  
LTD., NXP SEMICONDUCTORS HONG  
KONG LTD., NXP SEMICONDUCTORS  
INDIA PVT. LTD., NXP  
SEMICONDUCTORS JAPAN LTD., NXP  
SEMICONDUCTORS KOREA LTD., NXP  
SEMICONDUCTORS MALAYSIA SDN.  
BHD., NXP SEMICONDUCTORS  
SINGAPORE PTE. LTD., NXP  
SEMICONDUCTORS (THAILAND) CO.  
LTD., and NXP SEMICONDUCTORS  
TAIWAN LTD.,

Defendants.

Case No. 2:24-cv-00717-JRG-RSP

**JURY TRIAL DEMANDED**

**JOINT MOTION FOR ENTRY OF  
DISPUTED DISCOVERY ORDER**

Pursuant to the Court’s Order Setting the Scheduling Conference dated December 20, 2024 (Dkt. 20), Plaintiff Harbor Island Dynamic, LLC (“Plaintiff” or “Harbor Island”) and Defendants NXP Semiconductors (Shanghai) Ltd., NXP Semiconductors Japan Ltd., NXP Semiconductors Taiwan Ltd (collectively, “Defendants” or “NXP”) (Plaintiff and Defendants collectively referred to as “the Parties”) have met and conferred and hereby submit the proposed Disputed Discovery Order attached as Exhibit A. The Parties have indicated their competing proposals using

highlighting and square brackets in the attached order (indicating **HID's proposal**). While the Parties have reached agreement on most of the issues, one issue remains:

**HID's proposed language to be included in paragraph 12(d): "all materials generated by a testifying expert with respect to that person's work in this case [are exempt from discovery unless relied upon by the expert in forming any opinions in this litigation]"**

### **HID's Position**

HID requests this provision to make clear that material an expert generates in the course of his or her engagement on the case is not discoverable unless the expert relies on such material. As with drafts of reports and communications with attorneys, any such tangible material would be subject to immunity from discovery under Fed. R. Civ. P. 26(b)(3)(A) as it would, by definition, be prepared in anticipation of litigation. Removing HID's provision could render presumptively discoverable information relating to such items as, for example, theories of infringement that were considered by the expert but not pursued. There is no relevance to such material, as an expert could not testify to anything on which he or she did not rely.

### **NXP's Position**

HID's proposed insert to exclude from discovery "***all materials*** generated by a testifying expert with respect to that person's work in this case" is ambiguous and overbroad and goes well beyond the protection of drafts of expert reports and communications between counsel and experts. For example, HID's additional language would encompass information related to the testing of and teardowns of accused products done by a testifying expert that produce results inconsistent with the expert's expressed opinions and/or inconsistent with testing and teardown results affirmatively relied upon the expert. HID's proposed exclusion would therefore deprive NXP of the ability to fully explore the veracity of opinions and methodologies and fulsome cross

examination as to highly relevant facts if an expert were to simply choose not to discuss an adverse test or teardown result in his or her report.

Dated: February 4, 2025

Respectfully submitted,

/s/ Alfred R. Fabricant

Alfred R. Fabricant

NY Bar No. 2219392

Email: ffabricant@fabricantllp.com

Peter Lambrianakos

NY Bar No. 2894392

Email: plambrianakos@fabricantllp.com

Vincent J. Rubino, III

NY Bar No. 4557435

Email: vrubino@fabricantllp.com

Joseph M. Mercadante

NY Bar No. 4784930

Email: jmercadante@fabricantllp.com

**FABRICANT LLP**

411 Theodore Fremd Avenue

Suite 206 South

Rye, New York 10580

Telephone: (212) 257-5797

Facsimile: (212) 257-5796

William E. Davis, III

State Bar No. 24047416

Email: bdavis@davisfirm.com

Rudolph "Rudy" Fink IV

State Bar No. 24082997

Email: rfink@davisfirm.com

Ty Wilson

State Bar No. 24106583

Email: twilson@davisfirm.com

**DAVIS FIRM PC**

213 N. Fredonia Street, Suite 230

Longview, Texas 75601

Telephone: (903) 230-9090

Facsimile: (903) 230-9661

***ATTORNEYS FOR PLAINTIFF  
HARBOR ISLAND DYNAMIC, LLC***

/s/ Richard S. Zembek (with permission)

Richard S. Zembek

State Bar No. 00797726

Email: richard.zembek@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT US LLP**

Fulbright Tower 1301 McKinney, Suite 5100

Houston, Texas 77010-3095

Telephone: (713) 651-5151

Facsimile: (713) 651-5246

Eric C. Green

State Bar No. 24069824

Email: Eric.green@nortonrosefulbright.com

**NORTON ROSE FULBRIGHT US LLP**

98 San Jacinto Boulevard, Suite 1100

Austin, Texas 78701

Telephone: (512) 474-5201

Facsimile: (512) 536-4598

***ATTORNEY FOR DEFENDANTS***

***NXP B.V.; NXP SEMICONDUCTORS KOREA LTD.; NXP SEMICONDUCTORS (SHANGHAI) LTD.; NXP SEMICONDUCTORS JAPAN LTD.; AND NXP SEMICONDUCTORS TAIWAN LTD.***

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on February 4, 2025, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3).

/s/ Alfred R. Fabricant

Alfred R. Fabricant

**CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that all counsel of record has met and conferred in accordance with Local Rule CV-7(h) and this joint motion is unopposed.

/s/ Alfred R. Fabricant

Alfred R. Fabricant